IN THE

Supreme Court of the United States

October Term, 1963

SEP 3 1963
CLERK

HENRY HONEYWOOD, FREDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

AGAINST

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

PLAINTIFF-APPELLANT'S REPLY TO MOTION TO DISMISS OR AFFIRM

MOSES M. FALK,
Attorney for Plaintiffs-Appellants,
225 Broadway,
New York 7, New York.

LODER APPEAL PRESS, INC., 41 VESEY STREET, NEW YORK, N. Y. WORth 2-0689

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

HENRY HONEYWOOD, FREDONIA HONEYWOOD, JOHN E. PERRY and HELEN PERRY, individually, jointly, in behalf of themselves and others similarly situated,

Plaintiffs-Appellants,

AGAINST

NELSON A. ROCKEFELLER, Governor of the State of New York; CAROLINE K. SIMON, Secretary of State for the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; DENIS J. MAHON, JAMES M. POWER, JOHN R. CREWS and THOMAS MALLEE, Commissioners of the Board of Elections of the City of New York; and SEYMOUR HALPERN, Member of Congress, Representing the Fourth Congressional District of New York,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S REPLY TO MOTION TO DISMISS OR AFFIRM

FIRST: The attention of the Learned Court is respectfully called to the fact that on two separate occasions during the course of the trial of the above entitled action, motions to dismiss the complaint, which included both the first and second causes of action, were made *and denied*. On page 14 of the record the presiding justice in

denying the application to dismiss, stated, "You may be sure that the Court will act on your motion at this time, and unfavorably at this time". This motion was repeated at the end of the trial and *again denied*.

In addition, the Learned Court's decision denying the requested injunction and dismissing the complaint was allegedly based on the *facts presented* and not the law.

Therefore, on the basis of this trial and the decision rendered in connection therewith plaintiffs' second cause of action, as a *matter of law* stands as a proper legal cause of action and this cause of action, as it is constituted, is now the *law of the land. Unless it is reversed as a matter of law by this Supreme Court*, plaintiff's second cause of action can be used in every State of the Union as the basis for a lawsuit. There is no other decision which contradicts, *as a matter of law*, the validity of this cause of action.

SECOND: The record is clear, it speaks for itself and no words which respective counsel may use in their briefs can change the record. Nor can the decision of the Learned Court which heard the trial justify an uncontradicted five-mile color line, with whites on one side of the street and colored on the other side of the street, because it's "a logical dividing line". This Court has held that the division of races, regardless as to *whatever* the cause, is unconstitutional.

An examination of the complaint as well as Plaintiffs' Exhibit I at the time of trial, namely the map of the areas involved, will indicate that four out of the five miles of this uncontradicted color line *was created by Chapter 980 of the Laws of 1961*, by eliminating Area A from the new 6th Congressional District and by adding on Area B to the said new Congressional District to take

the place of Area A. Archer Avenue has now been created for the first time as a color line; as is Hollis Avenue, Colfax Street, and Springfield Boulevard. To admit that four out of five miles of the "color line" involved were created by Chapter 980, as does the defendants-appellees on page 9 of their brief, is to lend absolute confirmation that the *Gomillion* v. *Lightfoot* case strongly applies. In fact the Negroes involved in the case at bar, and who have been cut out of the present 6th Congressional District, number approximately ten times the number of Negroes in the *Gomillion* v. *Lightfoot* case.

What kind of legal argument does the Learned Court in its opinion, submit; and do the defendants-appellees present, when they say that prior to the enactment of Archer Avenue as the boundary line, there was a wall two miles long dividing white and colored and that all that Chapter 980 did was to include this wall as part of its southern boundary? All that they are in fact stating is that they have legally created a ghetto of 97,000 colored people and justify this ghetto because there is a wall which makes up two of the five miles involved. This argument is a argument not for the validity, but rather for the illegality of Chapter 980.

THIRD: An examination of the Defendants-Appellees' Exhibit A in the Appendix of their brief fully confirms appellants' contention.

The Learned Court's attention is respectfully directed to the table on the bottom of page 15 of defendants-appellees' brief. In their own brief appellees set forth the figures which show that the present new 7th Congressional District is now the largest Congressional District in Queens. That this district which has a population of 459,844 now has a Negro population of 95,809 and further

that the new 6th Congressional District having only a population of 417,367 and is the smallest district in Queens, now has a Negro population of only 4,812. Previously, which is confirmed by the table directly above on the same page, the old 4th and now the new 6th had a Negro population of 19,720. What has actually happened to approximately 15,000 Negroes in the old 4th which became the new 6th? The answer is, as the experts testified at trial, and which the figures clearly show, that these said 15,000 Negroes were taken from the smallest district in Queens, namely the new 6th and thrown into the largest district in Queens, namely the new 7th, creating a mass ghetto of 95,809 Negroes. If this is not discrimination, segregation, anti-Americanism and a violation of the Constitution of the United States, then nothing is.

By whatveer rationalization the lower Court may use, by whatever excuses, manipulation and justifications the appellees may present, the facts are clear. Human beings were thrown out of one Congressional District into another, solely because they were Negroes.

FOURTH: An examination of the record will show that not only is the second cause of action sound, as a matter of law, and confirmed as such by the lower Court, but the facts presented, fully confirm the validity of the allegations and Chapter 980 should be declared unconstitutional on the second cause of action as well as on the first.

To violate the constitutional rights of citizens, by depriving them of their right to vote; in creating a factual nullity where their vote doesn't count, by taking one area, namely Staten Island and consolidating the same by jumping over a body of water and intervening Con-

gressional Districts, such as a part of Brooklyn facing Jamaica Boy, solely to suit the ends of the party in power (under the new 16th Congressional District) and which has been attempted for the first time; or to take two remote areas and join them by a highway along the edge of the water (the new 14th Congressional District); or to create a Congressional District approximately 200 miles long and only a few miles wide in areas as (the 35th Congressional District); or to have a monstrosity between two Congressional Districts, namely the 23rd and the 24th in the Bronx where you have contortions, appendixes, additions and subtractions, which give these two districts more than a hundred sides and angles which is the worst in the country, and which situation was clearly presented by appellants in the form of charts at the time of trial, is a most violent abuse of the voting rights of the citizens of the State of New York. In countries like Cuba, Portugal, and Russia the inability of citizens to vote for candidates of their choice is known and openly admitted. The problem before this Court is that the same thing exists in the State of New York under Chapter 980, except that instead of being in the open, the issue is hidden; instead of being admitted, it is being denied; but the identical situation exists here as we have in the nations we commonly refer to as dictatorships.

It is a basic proposition that every American citizen should have the equal right to vote. This constitutional right has no meaning unless his right to vote is without impediment, without subterfuge, without prejudice and without being maneuvered into a position where whether he votes or not, the same result will occur.

It is to be noted that the Learned Court below in presenting its opinion, specifically in their Appendix thereto (p. 10 A of the Jurisdictional Statement) advised that

the Staten Island district joined with a piece of Long Island, namely Brooklyn, became in fact Democratic, and attempts to indicate that although you may take pieces from different areas of the State of New York and join them together, one cannot presume that this is for political advantage. The fact of the matter is that what the party in power did in the Staten Island situation by joining part of Long Island with Staten Island, became so notorious a situation and so violently objected to by every decent citizen, that they turned out en masse in the Brooklyn area to protest, and voted against the party which created this illegal and unconstitutional situation.

In summation, if the right of the American citizens to vote freely, without manipulation by the party in power and thus creating two types of citizens (namely the one whose vote counts and the one whose vote does not count), is not protected by this Court, then this nation stands in its greatest peril since the days of its inception; and given the time and the opportunity, a minority will ultimately and successfully take over this country in the form of a dictatorship.

FIFTH: Both causes of action in the complaint should be sustained and the decision of the lower Court reversed.

Respectfully submitted,

MOSES M. FALK,
Attorney for Plaintiffs-Appellants,
Office & P. O. Address,
225 Broadway,
New York 7, N. Y.

MICRO CARD
TRADE MARK ®
22

PC 92 2

MATTHEW BENDER & COMPANY
MB

64-6

microcard